

## REMARKS

This amendment is in response to the Office Action mailed on November 27, 2006 in which claims 1-3, 8-10, 13-16, and 27-41 were rejected. With this amendment, claims 1, 27, 30, 33, and 38 are amended. Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

### **1. Rejection of Claims 1-3, 13-16, and 27-41 Under 35 U.S.C. §102(b) as Anticipated by Bryan et al., US Patent No. 6,156,067**

On page 2 of the office action, the Examiner rejected claims 1-3, 13-16, and 27-41 as anticipated by Bryan et al., U.S. Patent No. 6,156,067 (“the ‘067 patent”). With this amendment, applicant has amended claims 1, 27, 30, 33, and 38 to overcome the rejection based upon the ‘067 patent.

Independent claim 1, as amended, recites “at least one appendage removably attached to the first or second base . . . wherein the stabilizing element may be removed from the cage through an opening created by removing at least one of the appendages.” Independent claim 27, as amended, recites “a retaining means for removably retaining the stabilizing means” and “a removably attached appendage.” Independent claim 30, as amended, recites “one or more appendages removably coupled to the scaffold assembly . . . wherein one or more appendages may be removed to provide an opening into or out of which the stabilizing element may be inserted or extracted.” Independent claim 33, as amended, recites “at least two appendages removably coupled to the scaffold assembly . . . wherein the stabilizing element may be removed from the cage through an opening created by removing at least one of the appendages.” Independent claim 38, as amended, recites “at least one removably attached appendage . . . wherein the stabilizing elements may be removed from the scaffold assembly through an opening created by removing at least one of the appendages.” The amendments to claims 1, 27, 30, 33, and 38 are supported by the specification, as filed. See, e.g., paragraph [0052] describing the “buttress 114” and corresponding FIGS. 2a-2c and 7.

The '067 patent does not identically disclose the combination of elements recited in the independent claims, as amended above. The '067 patent states that “a damaged implanted nucleus and/or gasket 24 can be removed and replaced.” Col. 7, lines 10-11. However, the '067 patent explains that the method of doing so is by “slitting the seal 110” to remove the “damaged nucleus 24” and then “suturing or gluing closed the slit seal.” Col. 7, lines 12-15. In contrast, the amendments to the independent claims discussed above include one or more appendages (see, e.g., paragraph [0044]) that are removable in order to permit the removal of the stabilizing element. The '067 patent does not disclose such a removable appendage and instead requires damaging the seal in order to replace the nucleus housed therein. Accordingly, independent claims 1, 27, 30, 33, and 38 (and their corresponding dependent claims) are not anticipated under 35 U.S.C. § 102(b) by the '067 patent and are presented for reconsideration and allowance.

**2. Rejection of Claims 1-3, 8-10, 13-16, and 27-41 Under 35 U.S.C. §102(e) as anticipated by Bryan et al., U.S. Patent No. 7,025,787.**

On page 3 of the office action, the Examiner rejected claims 1-3, 8-10, 13-16, and 27-41 as anticipated by Bryan et al., U.S. Patent No. 7,025,787 (the '787 patent). Applicant has amended independent claims 1, 27, 30, 33, and 38 to overcome the rejection based upon the '787 patent.

The independent claims have been amended as discussed in Section 1 above. The device disclosed in the '787 patent does not appear to include a removable stabilizing element. The Examiner identifies element 60 as the “stabilizing element.” However, the “central body 60” appears to be encapsulated by shells 20, 40 and does not appear to be removable from the shells even if the “flexible sheath 70” were to be slit open or removed. See Fig. 4. Each of the independent claims, as amended, includes a removable stabilizing element. Accordingly, independent claims 1, 27, 30, 33, and 38, as amended (and their corresponding dependent claims) are not anticipated under 35 U.S.C. §102(b) by the '787 patent and are presented for reconsideration and allowance.

**3. Rejection of Claims 1-3, 13-16, and 27-41 Under 35 U.S.C. §102(b) as Anticipated by Eberlein et al.**

On page 3 of the office action, the Examiner rejected claims 1-3, 13-16, and 27-41 under 35 U.S.C. §102(b) as anticipated by Eberlein et al., U.S. Patent No. 6,626,943. With this amendment, Applicant has amended independent claims 1, 27, 30, 33, and 38 as discussed above to overcome the rejection based upon Eberlein et al. Similar to Applicants argument with respect to the '787 patent above, the "disk 3" of Eberlein et al. does not appear to be removable even if the "fibre ring 4" were to be removed. See Figs. 1-5. Each of the independent claims, as amended, includes a removable stabilizing element. Accordingly, independent claims 1, 27, 30, 33, and 38, as amended (and their corresponding dependent claims) are not anticipated by Eberlein et al. under 35 U.S.C. §102(b) and are presented for reconsideration and allowance.

**4. Conclusion**

Claims 1-3, 8-12, 13-16, and 27-41 are pending in the present application. Claims 11 and 12 are withdrawn. Claims 1, 27, 30, 33, and 38 have been amended. Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application, as amended, is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely

acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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